

Applicant : Thomas G. Woolston  
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Amendments to the Drawings:

Please cancel supplemental Figure 12A.

### REMARKS

In view of the interview discussion with Applicant Woolston, the foregoing supplemental amendment and the following remarks, reconsideration and allowance are requested. Claims 45-64 are now pending with claims 45, 50, 56, 60 and 61 being independent.

As discussed, the pending claims recite at least two features not found in the art or any combination thereof. First, all claims now recite an *autonomous ascending bid auction instance or process that is initiated by a remote seller* at the host apparatus. Second, in combination with that feature the claims provide a means for participants to pay for items and obtain a positive account balance by book entry transaction between participant accounts maintained, accessible or tracked by the claimed system or method.

As an initial matter the use of the claim terms 'autonomous ascending bid auction instance or process' and 'book entry transaction' in the context of the claimed invention would have had an ordinary meaning to one of skill in the art as follows:

'Autonomous' means self-governing; independent; subject to its own laws only. Webster's Encyclopedic Unabridged Dictionary of the English Language, p. 141, (1996) Random House Value Publishing, Inc.

'Ascending' means moving upward; rising. *Ibid.*, p. 121;

'Bid' means to offer (a sum certain) as the price one will pay or charge. *ibid.*, p. 204;

'Auction' means a publicly held sale at which property or goods are sold to the highest bidder. *ibid.*, p 135;

Thus, 'autonomous ascending bid auction instance or process' as used in the context of the claims would have been understood by one of ordinary skill in the art as meaning a computer implemented auction process that is self regulating, i.e., requires no physical user, seller or system operator intervention to accept or process bids, that has ascending bids, i.e., bids that progressively go higher and higher, at an auction, i.e., bids are at a price at which one is willing to win at the auction process. In addition, the autonomous ascending bid auction process is initiated electronically by a remote seller.

'Book entry transaction,' as used in the specification means the transfer of an accounting for funds or goods from one account to another without float occurring in the transaction. The

specific use of the term book entry transaction is further limited in the claims to the transfer of an accounting for funds between accounts maintained, accessible or tracked by the claimed internet auction system. The use of the term 'book entry transaction', as used by Applicant in the specification and the claims, in the context of electronic computer implemented auction field of endeavor is a novel variant of a book transfer as that term would be understood by one of ordinary skill in the art. See, for example, the definition of 'book transfer' as:

Book Transfer: The transfer of funds from one deposit account into another at the same financial institution. Book transfers are an efficient method of consolidating funds because they eliminate check clearing float. Barron's Dictionary of Banking Terms, 2000 Barrons Business guides.

Thus, recitation of book entry transaction in the specification and the present claims represents a new and non-obvious invention, namely, the creation and use of accounts in which funds can be used and generated by participants in the context of the claimed auction system in the buying and selling of goods while remaining remote from the system.

Claim 45 provides a use for these two novel features in the context of a specific technology. It provides an internet-based auction and payment system for facilitating participant initiated *autonomous auction instances* and *book entry payment transfers* between participant accounts maintained by the system for participants to make payments to other participants on the system for items won at the *autonomous auction instances*, with a computer in communication with the internet and capable of executing a plurality of substantially simultaneous processes, one or more processes executing on the computer to perform the following: (1) provide via the internet a seller participant interface for a remote seller participant to select a predetermined item category from among a plurality of predetermined item categories, the category selection providing a further predetermined sub-category selection for item categorization, the item categorization corresponding to at least one or more goods and collectible categories; (2) provide to the remote participant seller, via the participant interface, a means for the participant to initiate

an *autonomous ascending bid auction instance* for an item in the participant selected category for an item electronically presented for auction by the participant to the system, the system then *autonomously presenting and auctioning* the item with an *ascending bid auction process* to an open audience of internet participants; and (3) provide a means for a buyer participant to pay for an item won at the *autonomous ascending bid auction instance* conducted by the system by connecting the buyer participant to an account maintained by the system and making a computer implemented *book entry transaction* between data records in the database to move an accounting for funds to an account maintained by the system for the seller participant to pay for an item won via the ascending bid auction process. (Claim 45 Emphasis Added).

Thus claim 45 is allowable for the use of the combination of these two novel features and in addition for its claimed category / sub-category selection technology and for the additional reasons provided in the further remarks section below.

Support for claim 45 can be found in the specification as a whole and the following illustrative but not limiting examples. The seller category selection feature can be found in figure 13, the seller selected 'category' 940 and 942 and seller selected 'subcategory' 944, 946 data fields. As described at Col. 15, l. 57 - Col. 16. l. 7<sup>1</sup> which begins with "The category 940 and sub-category 944 data fields are restricted to selections that can be made by the respective pull down bars 942 and 946. This aids the posting terminal operator [the seller] in selecting the correct market for the good when creating a record and assures that all records can properly link into a market computer 900 market database." See also Figure 3 and the description from Col.

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<sup>1</sup> For the purpose of this discussion, the common specification of U.S. Patent No. 5,845,265 column and line numbers will be used to point cite to specification support for the pending claims.

9., l 63- Col. 10, l. 32 and the invention overview section of Col. 3 l. 42- col. 4, l. 37 [after creating a data record for the good] '[t]he participant or local resident may now electronically present his Frank Robinson card to any consignment node, consignment node auction or consignment node market maker in the consignment node network. And that 'It is within the scope of the invention, however, to take electronic postings from other consignment node users or individuals over the network . . . '

Support for an autonomous ascending bid auction initiated by a remote seller is found in passages cited above and in Figures 2, 3, 4, 5, 6, 12 and 13 and the related detailed disclosure about those figures and their interaction with each other in a system. More specifically, Figure 3 "shows a logical flow diagram of the steps the consignment node may use to create a database of record of good[s] (sic) for sale or for auction." Col. 9, l. 63-65. Figure 4 "shows the logical block flow diagram of the processes the consignment node may take to execute an auction." Col. 10, l. 33-35. Figure 5 "shows the logical flow for the post bid subroutine 300." Col. 11, l. 29-30. And Figure 6 "shows the consignment node subroutine to check participant sessions for bids during the auction mode." Col. 11, l. 52-53.

Figure 12, shows a block diagram to "allow the virtual presentment of goods to market." Col. 14, l. 51-53. It also depicts the database server 806, the auction data records 817 and an accounts database 824. See, Figure 12.

Support for book entry transaction between participant accounts maintained, tracked or accessible to the system can be found at:

It is understood that participant accounts may be tracked at the market maker computer 800. Moreover, it is understood that account surpluses may be acquired by participants speculating in collectable goods may be invested in

highly liquid and safe assets such as U.S. Treasury bills to provide and interest bearing accounting for positive cash balances. This provides an incentive, or at least a hedge against inflation, for a participant to keep funds within the collectible market place and to use these funds to speculate in the collectible market. By using funds available at the market maker computer 800 participants can reduce the transaction costs associated with credit cards and other transaction clearing means and optimize the participants' return on price movements in the buying and selling of collectable goods. Col. 19, l. 45-59.

The market maker computer 800 may use an accounts 824 database to track payments due to posting terminal 700 users. Col. 19, l. 16-18.

And that '[i]t is understood that records may move between the databases by *book entry transaction*.' Col. 19, l. 38-40. (Emphasis Added).

Moreover, a participant may establish as account with his local consignment node to be debited and credited with the funds used and generated with his transactions. Col. 5, l. 11-14. And that

It is understood that a consignment node user may have established a credit or deposit account for the participant from past sales or the transfer of funds and the verify step 402 may connect the participant to the account. Col. 12, l. 33-36.

Dependent claim 46 further provides that a positive account balance for a participant account can be cleared of a positive balance by either a check made paid to the order of the associated participant or by electronic fund transfer from a financial institution associated with the system to a financial institution associated with the participant. Thus, in describing the claimed inventions novelty and usefulness in contrast with conventional financial networks, this claim make abundantly clear, as discussed, that the claimed book entry feature as used in claim 45 is operating in its own system environment in the context of the claimed auction system - and is not utilizing the conventional financial infrastructure until a user elects to have funds removed from or placed into the system. See, Col. 19, l. 16 - 21. Independent consideration and allowance is requested of the features claimed in this dependent claim.

Dependent claim 47 further provides and claims the advantages of this quasi-private system environment account arrangement in the context of the auction system by demonstrating that credit card processing fees or external financial network charges are eliminated by use of

positive available balances in the participant accounts in the buying and selling of collectable goods via the system by transferring accounting balances between the participant accounts maintained by the system. Thus, the claims now recite a specific advantage of the claimed system embodiment of the auction invention over the art of record and the conventional financial infrastructure. See, Col. 19, l. 54- 59. Independent consideration and allowance of this further feature is requested.

Dependent claim 48 provides the further limitation that the buyer participant accepts the offer for sale from the seller participant via the autonomous ascending bid auction process, wherein the seller participant previously purchased the item as a network participant in the system and the buyer participant initiates the system to clear the purchase by book entry transaction between the buyer participant account and the seller participant account.

Specification support can be found as follows:

After the consignment node has cleared the transaction the system electronically transfers ownership of the Frank Robinson card to the participant. The participant may then be presented with the choice of directing the delivery of the Frank Robinson card to a desired location or may choose to post a new reserve or offer price for the card and direct the card to remain in the possession of the consignment node user. Col. 5, l. 18-25.

The consignment node may then post sold! and the sell price to all participants terminals and proceed to post the next item for auction. Again a successful purchaser may elect to direct delivery of the good or post the good on the electronic market at a new participant determined offer price. Col. 6, l. 39-44.

If the participant has elected to ship goods then the consignment node will print a shipping label 404 for the consignment node user to attach to the good for shipment. The transfer of ownership routine may then exit 416. If the participant has elected to re-post the good or collectable the participant may specify a new reserve or offer price for the good or collectable. It is understood that the purchasing participant may elect to leave the good or collectable at the consignment node and post a new offer or reserve price and may identify that the good is on the market, e.g., may be bought or sold at any time, or that the good is awaiting an auction date. Col. 12, l. 55-66.

The unique ramifications of the autonomous ascending bid auction and book entry features are further highlighted by the claimed re-posting embodiment of the invention, e.g., the invention facilitates a self contained economy of participant buying, selling and re-selling

receiving funds and using funds generated from transactions all while within the system. This feature is not described or taught by the art of record in the context of the autonomous ascending bid auction feature nor in the context of the book entry account feature and independent consideration and allowance is requested.

Dependent claim 49 provides the further limitation of returning an interest bearing accounting on positive balances maintained in the participant accounts of a plurality of internet users whom maintain participant accounts with the system. Specification support can be found in the passages cited above. As discussed in the further remarks section below, Grant et al., is non-analogous art and therefore is not relevant and cannot be properly combined with analogous references to reject this claimed feature. In other words, this feature must be considered in light of the claim invention from which it depends and not as a divorced element. Independent consideration and allowance is requested.

Independent claim 50 provides for an internet-based auction and transaction system for executing *autonomous ascending bid auction* instances for a plurality of independent participants in response to the initiation of the instances by the plurality of independent participants and for establishing multiple participant accounts that can be debited and credited in accounting for the funds used and generated by participant transactions in the system, with a computer system in communication with the Internet and capable of executing a plurality of substantially simultaneous processes, one or more processes executing on the computer system to maintain multiple participant accounts accessible based on information received from multiple participants, the multiple participant account balances capable of being debited and credited to account for the funds used and generated by participant transactions with the system, *automatically, in response to a participant interface to the system, initiate an autonomous ascending bid auction selling process* based at least in part on information electronically received from a participant acting as a seller participant in the system, the process describing an item offered for sale via *the system generated autonomous ascending bid auction process* to potential buyer participants, connecting a participant acting as a buyer in the system to at least one participant account maintained by the system and associated with the participant acting as the buyer in the system; and *clearing by book entry transaction* the payment between the



participant acting as the buyer in the system with the participant acting as the seller in the system by debiting the participant account of the participant acting as the buyer and crediting the participant account for the participant acting as the seller within the system, the transaction between the participant acting as the buyer in the system and the participant acting as the seller in the system being responsive at least in part to the participant acting as the buyer in the system winning an item at the *autonomous ascending bid auction process* that was generated by the system in response to the participant acting as a seller via the participant interface to the system. (Claim 50 Emphasis Added). Claim 50 is using the book entry accounting feature in conjunction with the claimed internet-based auction system and is allowable for at least that reason. Specification support is recited above.

Dependent claim 51 provides further that the internet-based auction and transaction system wherein the initiated selling process, generated in response to a participant input from a participant interface to the system where the participant is acting as a seller, comprises providing a predetermined category selection to the participant acting as the seller, the predetermined category selection providing a topical arrangement of selling instances to participants acting as buyers by maintaining a topical navigational for participants acting as buyers to navigate a topically arranged interface to the system wherein the topical navigation corresponds at least in part to the predetermined category selection provided to the participant acting as the seller with an interface providing a selection of a category for the selling instance. Specification support for the category selection feature is found in the passages cited above.

Dependent claim 52 adds the further limitation that the internet-based auction and transaction system of wherein the initiated selling instance, generated in response to a participant input from a participant interface to the system where the participant is acting as a seller, includes item description information and the system provides a unique code to confirm item listing to the participant acting as a seller. The unique code generation feature generated in response to a user initiating a remote ascending bid auction instance is not found in the art of record in the context of the claimed invention. Independent consideration and allowance of this dependent claim is requested. Specification support for this code generation feature can be found at:

The code field 948 displays the bar code data in text form that the market maker computer 900 sends to the posting terminal 700 when a record is successfully posted. Therefore, the code field 948 can serve as a quick visual confirmation to the posting terminal user that the displayed record has been posted. Col. 16, l. 8-13.

The market maker computer 800 may verify and accept a record and generate and send a unique bar code number for each record. The bar code number may contain a code that identifies a posting terminal 700. The posting terminal accepts the bar code and places the code in the appropriate record. The unique code generated for each successfully posted record may serve as confirmation that a good has been successfully posted. Col. 17, l. 27-34.

Dependent claim 53 adds the additional limitation that the internet-based auction and transactional system where the transactional system is under a first entity's control, the information describing the item is offered for sale in an ascending bid auction mode and is received from a computer system independently operated by the participant acting as the seller, and the auction process for the participant acting as the seller is initiated while the item remains outside the first entity's possession. See, Col. 4, l. 34-38 and Col. 4, l. 46-59 (It is the seller that is representing this he or she is exercising control over of the item for auction - not the system or system operator).

Dependent claim 54 provides that an internet-based auction and transaction where the auction process for the participant acting as the seller is initiated while the item remains outside the first entity's control.

Dependent claim 55 provide an internet based auction and transaction system where the auction process for the participant acting as the seller is initiated while the item remains in the control of the participant acting as the seller.

Independent claim 56 provides an automated method, performed by a computer-based auction and transaction apparatus for conducting multiple simultaneous participant-to-participant autonomous ascending bid auctions via a connection to a data packet network and the world wide web in a fully automated, topically arranged system that can be navigated by topical categories, and wherein sellers and buyers can consummate transactions between accounts maintained by the system by *book entry transaction*, the computer-based auction and transaction apparatus being under the control of a first entity, the method tracking a participant's account

with the computer-based auction and transaction apparatus, receiving via the data packet network from the participant acting as the seller a description of an item offered for auction, the received description including a category selected from a list of categories provided from the apparatus, in response to receiving a description of an item for auction from the seller participant, generating a unique tracking identifier for the item, displaying, in response to a search request from a participant acting as a buyer, the description of the item for auction in a presentation format via the world wide web, the display including advertisements that generate revenue for the auction system, initiating an *autonomous ascending bid auction process* at the computer-based auction with the apparatus for an item posted by the seller participant, the auction being conducted while the item for auction remains outside of the first entity's possession, receiving at least one bid for the item for auction from at least one bidder via a computer interface, an automated computer-implemented auction process processing the bid to determine whether to post the bid as the current high bid for the item for auction, determining a final high bidder for the item via the computer-implemented auction process and notifying the high bidder that he or she is the winner of auction, and clearing a payment by *book entry transaction* between a participant account that is tracked with the apparatus and associated with the winning bidder and an account that is tracked with the apparatus and associated with the seller participant for the item that was *autonomously auctioned* by the apparatus. (Claim 56 Emphasis Added).

Independent claim 57 provides an apparatus for conducting *autonomous Internet auctions* and for transferring funds between users of the system by *book entry* between user accounts associated with the apparatus with a computer system operationally connected to the Internet, a process executing on the computer system for maintaining a participant's account associated with at least one selling participant, a storage device operationally connected to the computer system, the storage device storing a database of data records, the data record identifying an item to be auctioned by the computer system via an *autonomous auction process*, a data interface operationally connected to the computer system, the data interface providing electronic connectivity between the computer system and the Internet, a worldwide web-to-database mapping module, the worldwide web-to-database mapping module providing a link between a

hypertext mark up language page server and the storage device, an electronic mail module operationally connected to the data interface and executing on the computer system, the electronic mail module providing an information link to the participant seller of the item for auction represented by a data record stored by the data storage device, the computer system executing an auction program that is an *autonomous ascending bid auction process* that is started by a remote selling participant, and a process executing on the computer system to verify a participant purchaser information and connect that participant to an deposit or charge account maintained by the system, and then authorizing that participant to execute a process on the apparatus to clear a charge from the result of an auction process by debiting the participant account for the purchase of an item won by participation with the *autonomous ascending bid auction program* and depositing an amount representing the result of the auction process to the participant seller's account maintained by the apparatus by *book entry transaction*.

Dependent claim 58 provides that the apparatus has a process executing on the apparatus to credit a system account a transaction fee based at least in part on the result of the autonomous ascending bid auction program.

Dependent claim 59 further provides an apparatus that has a process executing on the apparatus to extract a commission fee from the seller participant based at least in part on the result of the autonomous ascending bid auction program. See, Col. 5, l. 32-36, figure 7 and Col 12, l. 42-45.

Independent claim 60 provides an apparatus for conducting fully automated simultaneous Internet auctions and for transferring funds between users of the system by *book entry transaction* between user accounts associated with an accounts database with a computer system operationally connected to the Internet, an accounts database operationally connected to the computer system, a process executing on the computer system for maintaining a participant's account associated with a selling participant in the accounts database, a storage device operationally connected to the computer system, the storage device storing a database of data records, the data record identifying an item to be auctioned by the computer system, a data interface operationally connected to the computer system, the data interface providing electronic connectivity between the computer system and the Internet, the computer system executing an

auction program that executes an autonomous ascending bid auction in response to an input received from a remote selling participant, and a process executing on the computer system to verify a participant purchaser information and connect that participant to an deposit or charge account maintained by the system, and then authorizing that participant to execute a process on the apparatus to clear a charge from the result of an auction process by debiting the participant account for the purchase and crediting an amount representing the result of the auction process to the participant seller's account by book entry transaction.

Independent claim 61 provides a method for a computer application program operated by a remote participant seller to coordinate the asynchronous generation and execution of an autonomous ascending bid auction process at a remote topically arranged internet-based auction system while the computer application program is isolated from communication with the internet-based auction system and to receive the proceeds from the result of the autonomous ascending bid auction process in an account tracked by the internet-based auction system that is accessible by book entry transaction with other accounts tracked by the system, the method performed by the computer application program in conjunction with the internet-based auction system by retrieving information about the topographical structure of the remote internet based-auction system from a data repository accessible while the computer application program is isolated from communication with the internet based auction system, providing a selection of topographical categories and sub-categories for a user to select from when inputting data to build a data record of a good that will be subsequently posted into the internet-based auction system, the selection of topographical categories and sub-categories based at least in part from the information about the topographical structure of the remote internet-based auction system retrieved from the accessible data repository to assure proper linkage into the data structure maintained by the remote internet-based auction system when the computer application program subsequently communicates the data record of the good to create an auction instance for the good at the remote internet-based auction system, providing a data input field to receive a descriptive short title for the good from a participant seller, providing a data input field to receive a subjective textual description of the good from a participant seller, generating a data header that contains at least a user identification code and an authorization password for communication

with the remote internet-base auction system, receiving scheduling information from a participant seller at the computer application program to (a) post the data record in the remote internet-based auction system to initiate an autonomous ascending bid auction instance at the remote internet-based computer system, (b) designate a time at which the computer application program will contact the remote internet-base auction system to post at least one data record to initiate an autonomous ascending bid auction instance for the at least one data record at the remote internet-based auction system or (c) post the data record in the remote internet-based auction system designating the good as on hold awaiting an autonomous ascending bid auction instance start date at the remote internet-based auction system and, receiving the proceeds from the result of the autonomous auction instance from an internet bidder into an account maintained by the remote internet-based auction system the proceeds being transferred by book entry transaction to the account maintained for the seller.

Support for claim 61 can be found in Figure 13 and at Col. 15, l. 43- Col. 16, l. 2. More specifically at Col 13, l. 57 - Col. 16. 12, which provides:

The category 940 and sub-category 944 data fields are restricted to selections that can be made by the respective pull down bars 942 and 946. This aids the posting terminal operator in selecting the correct market for the good when creating a record and assures that all records can properly link into a market computer 900 market database. A file may be stored at posting terminal 700 that corresponds to database structure at the market maker computer 800. Having the database structure in a file at posting terminal 700 may allow the posting terminal to receive updates by remote file transfer techniques, such as kermi, ftp and xmodem and ymodem protocols.

It is understood that the restricted fields are coordinated with the structure of the for-sale database 814 to guide the posting terminal 700 user in the proper selection of a market category and subcategory of the posting of a good. col. 16, l. 40-44.

The user may store a composed record on the storage device 710. The record maker routine may also contain a command button 706 to immediately post the record 708. It is understood that the user may designate a time at which the posting terminal 700 may automatically contact the market maker computer 800 and post the selected goods. The post request 716 module may allow a user to select record from storage unit 710 or as in the case where the user selected the immediate post command 708 the post module 712 may accept a record as an input. The ability of the posting terminal 700 to store and select records for posting asynchronously from when the record is created allows a user to compose records when the posting terminal is isolated from communication with the

market maker computer 800. The post module 712 may invoke the post request module 716 to post the designated records on the market and make a virtual presentment of a good. col. 17, l. 1.

The posting record may also include a header that identifies a store identification, user identification, passwords and the like to allow the market maker computer 800 to verify authenticity, approve authorization and track usage of the posting terminal 700 by a particular posting terminal 700 and posting terminal user. Col. 17, l. 21-26.

Dependent claim 62 further provide a method of receiving input from the participant seller at the computer application program to designate whether the good may be viewed by an open audience of potential bidding participants in the internet-based auction system prior to the initiation of the autonomous ascending bid auction instance or whether the good may not be viewed by potential bidding participants in the internet-based auction system prior to the initiation of the automated ascending bid auction instance. See, Col. 12, l. 66- Col. 13, l. 1.

Dependent claim 63 further provides a method for receiving updates from the remote internet-based auction system about the structure of the topically arranged system maintained by the internet-based auction system and storing that updated structural information in a file accessible to the computer application program while the computer application program is not in communication with the internet-based auction system. See, Col. 15, l. 63 - Col. 16, l. 2.

Dependent claim 64 provides a method in which the initiation of an autonomous ascending bid auction instance by the computer application program opening an ascending bid auction process to an open audience of a plurality of internet participants at the remote internet-based auction system, the internet-based auction system automatically closing the auction process to the internet participants based on a predetermined condition. See, Col. 10, l. 48-63 and Figure 4 and related remarks.

### FURTHER REMARKS

All of the pending claims now require a computer implemented autonomous (self regulating) ascending bid auction instance or process that is initiated by a remote seller and importantly the establishment of user accounts maintained, tracked or accessible to the system for a user to pay for items and receive payment for items while participating in the system by book entry transaction between the user accounts. As these two limitations are present in the body of all independent claims - the Examiner is not simply free to ignore these limitations or the novel and non-obvious combination thereof.

On the first point - an autonomous ascending bid auction initiated by a remote seller - no art of record discloses this feature. Indeed, the scope and content of the alleged prior art, can be broken down into two classes, (1) those in which the seller is physically participating in the bid acceptance process, or (2) those in which, at best, the operator of the computer system has physical possession of the item or is physically accepting the bids.<sup>2</sup> In neither case is there a reference or teaching that discloses an *autonomous (self regulating) ascending bid auction* process that is *initiated by a remote seller*.

This feature is not a trivial distinction over the art of record nor is it the mere automation of a physical step for at least the three reasons taught by Applicant. First, having a seller remotely initiate an autonomous ascending bid auction instance gives the claimed invention its ability to economically scale and self-organize. Second, it makes the remote seller responsible for their own online reputation and performance. Third, it achieves an unexpected result in the leveraging of the claimed invention's baseline network effect to significantly enhance the value of the network for the users.

An autonomous ascending bid remote auction instance or process initiated by a remote seller gives the claimed invention its ability to scale self organize because it shifts the burden

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<sup>2</sup> By its express terms, Fujisaki relates to an "auction information transmission processing system which enables individuals dispersed over a wide area to participate in an auction without gathering at the auction site." Fujisaki at col. 1, lines 58-61. More particularly, Fujisaki makes clear that his information transmission system is directed to allowing physically dispersed *bidders* to remotely participate in an auction. As such, Fujiskai does not contemplate, nor make any provision for, automating the input of information from the *seller* of the auction item.



from the system operator to the remote sellers to post items for auction, accurately describe those items for auction, and be bound to the results of the auction. As described and claimed it is the seller that is organizing items for auction by selecting from a predetermined categorization of items not the system operator. And it is the remote seller that is selecting the image, description or condition depiction for the good for auction. Thus, overcoming a short fall of the alleged prior art systems, namely the physical constraints of a system operator posting items for sale. Therefore the claimed self regulating feature provides the system with a baseline network effect in its operations.<sup>3</sup>

As further taught by Applicant, shifting the burden to the remote seller to initiate an autonomous ascending bid auction process forces the seller to put his or her reputation on the line in fulfilling the seller specified parameters of the auction. Indeed as taught in the application this feature "allows collectable goods to be concentrates for a single electronic auction or virtual collectable market on a market maker consignment node without incurring the costs of shipping the goods to a central location to bring the good to the market maker consignment node.' See, Col. 13, l. 9- 14. And it allows sellers to create "business goodwill" in the prudent use of the system. Col. 4, l. 6-12.

The features of an autonomous auction instance initiated by a remote seller, as taught by applicant, leads to an unexpected result - primarily the applicability of an unexpected enhancement to the conventional network effect. The network effect has been characterized as a function of a network value to its users being equal to the number of network users squared. The unexpected result, as taught by Applicant is that the network effect is multiplied and enhanced by the seller's ability to initiate multiple auction instances available through the claimed invention. That is, the value of the network in applicants claimed invention is the network effect of the number of users squared times the power of the ability of the self regulating auction processes to enhance a sellers effectiveness in managing more auctions that physically possible by the prior art. Therefore, it is not enough for the Examiner to surmise that the autonomous ascending bid auction instance initiated by a remote user is the mere automation of the physical auctioning of

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<sup>3</sup> The network effect posits that the value of a network to its users (here the buyers and the sellers) is equal to the square of the number of users.

the prior art - the seller or the system operator physically processing bids - because that is a paradigm that specifically curtails the ability of a seller to physically process more than a handful of auctions or specifically limits the auction to a narrowly defined and transient event. Thus, teaching away from applicant's invention of specifically empowering remote sellers to enable and multiply the network effect.

Regardless of however the examiner improperly combines the art or improperly interjects his or her own unsupported believe as to the applicability of the posited 'mere automation' case law, the presently claimed invention goes a step further in improving on what the examiner might claim is the mere automation of the prior art - namely the claimed invention takes the autonomous ascending bid auction limitation initiated by a remote seller and specifically combines and narrows its application with the further configuration of having user accounts maintained, tracked or accessible by the auction system in which funds can be credited and debited by *book entry transaction* between the user accounts.

As the examiner is well aware the Shavit and Grant references are non-analogous art under the holding of the Board of Patent Appeals and Interferences. For the same reason that Salmon was adjudged by the Board of Patent Appeals and Interferences as being non-analogous art in discussed co-pending case (U.S. Serial No. 09/253,014) so is Shavit, Grant or any other non-auction references. More particularly, the Board held that "***[b]ecause Salmon is not directed to a computer-implemented auction and does not relate at all to the auctioning of goods, we find that Salmon is non-analogous art, unrelated to either [Woolston's] field of endeavor i.e. computer-implemented auctions, or to any problem reasonably related to the problem that [Woolston] has solved ....***" Board Decision at 19 (copy attached). As a result, Salmon cannot be relied on by the examiner in the parent application in rejecting the claims. See, e.g., Jurgens v. McKasy, 18 USPQ2d 1885 (Fed. Cir. 1991) (If a cited reference "is not analogous art, it has no bearing on the obviousness of the patent claim."). Moreover, because this application is a related co-pending case, and the pending claims are expressly directed to "an internet-based auction," neither can Salmon, Shavit or Grant be relied on in rejecting the pending claims. Accordingly, the outstanding 103 rejection based on Shavit and Grant is defective and must be withdrawn.

Furthermore, as discussed, the Examiner is well aware that the EFT system relied upon by Shavit and the other art of record - is a transaction between banks that has float in the transaction. In addition, banks control access to the EFT system by physical control of EFT terminals and is governed under Regulation D. Thus, it is highly suspect that the Shavit system stands for the proposition cited by the Examiner - namely that banks might allow a system outside their physical control to access and command the EFT system. At any rate, the claimed book entry feature specifically excludes the applicability of conventional financial institutions or infrastructure applicability to the claimed invention.<sup>4</sup> Under the rationale of the Board and as the claims are now specifically presented - the invention is defined as the accessibility of user accounts within the context of the autonomous ascending bid auction system where buyers and sellers can receive, hold and disperse funds for purchases made and sales generated by their transactions with other users of the system. It is simply not enough for the Examiner to ignore the Board's application of *In re Fine* - a teaching from the art of record is required to properly combine references to reject the claimed invention. Indeed, to hold otherwise demonstrates that the Examiner has engaged improper hindsight in further rejecting the claims.

Lastly, the Patent Office is reminded that the Examiner is not free simply to assert that express claim elements are somehow met simply based on an assertion that "it would have been obvious" or upon bare assertions of "Official Notice." Rather, the Federal Circuit has consistently reminded patent examiners that obviousness rejections based on assertions lacking evidentiary support in the record cannot stand. In *In re Lee*, 277 F.3d 1338 (Fed. Cir. 2002), the Federal Circuit vacated a Patent Office Board affirmation of an obviousness rejection because, rather than relying on objective evidence, the Patent Office based its obviousness rejection on conclusory statements having no evidentiary support in the record. *Id.* at 1342-43. In doing so, the Federal Circuit made it abundantly clear that "subjective belief and unknown authority" and "[assertions of] common knowledge and common sense" are not "a substitute for evidence." *Id.* at 1343-44.

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<sup>4</sup> That is not to say, however, the regulatory and law enforcement agencies would not have an interest in the claimed inventions compliance with appropriate laws and regulations governing such conduct.

As evidenced by the copy of the Decision on Appeal filed herewith, the Board is carefully following the Federal Circuit's mandate. See, e.g., Decision on Appeal at page 21.

Moreover, the same Decision on Appeal makes clear that the Board regards prior art references that discuss conventional human-implemented processes as non-analogous prior art that may not properly be cited in rejecting claims, such as pending in this application, directed to computer-implemented processes. See, e.g., Decision on Appeal at page 19.

Accordingly, if the Patent Office persists in rejecting the claims in this application, the Patent Office is requested to fulfill its legal responsibilities by basing any such claim rejections only on *evidentiary support in the record* and using only *analogous* prior art references.

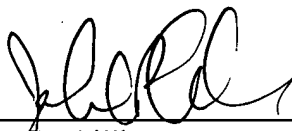
It is believed that all of the pending claims have been addressed. However, the absence of a reply to a specific rejection, issue or comment does not signify agreement with or concession of that rejection, issue or comment. In addition, because the arguments made above may not be exhaustive, there may be reasons for patentability of any or all pending claims (or other claims) that have not been expressed. Finally, nothing in this paper should be construed as an intent to concede any issue with regard to any claim, except as specifically stated in this paper, and the amendment of any claim does not necessarily signify concession of unpatentability of the claim prior to its amendment.

Please apply any charges or credits to deposit account 06-1050.

Respectfully submitted,

Date: \_\_\_\_\_

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John C. Phillips  
Reg. No. 35,322

PTO Customer No. 20985  
Fish & Richardson P.C.  
12390 El Camino Real  
San Diego, California 92130  
Telephone: (858) 678-5070  
Facsimile: (858) 678-5099